IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 14029 of 2006(T)

PETITIONER:

SANTHAKUMARI T.,
7/922, KAMALALAYAM, SEKHARIPURAM JUNCTION,
KALPATHIL (POST), PALAKKAD-678 003.

BY ADV. SRI.K.MOHANAKANNAN
SMT.A.R.PRAVITHA

RESPONDENTS:
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1. **UNION OF INDIA,**
   REPRESENTED BY THE SECRETARY, MINISTRY OF
   HOME AFFAIRS, FREEDOM FIGHTERS DIVISION,
   LOK NAYAK BHAVAN, KHAN MARKET, NEW DELHI-110003.

2. **STATE OF KERALA,**
   REPRESENTED BY THE CHIEF SECRETARY TO GOVERNMENT,
   GOVERNMENT OF KERALA, SECRETARIAT,
   THIRUVANANTHAPURAM.

3. **THE REVENUE DIVISIONAL OFFICER,**
   REVENUE DIVISIONAL OFFICE, KOZHIKODE.

4. **THE DISTRICT COLLECTOR, PALAKKAD.**

5. **THE PRINCIPAL SECRETARY TO THE**
   GOVERNMENT, FREEDOM FIGHTER'S DIVISION,
   GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.
   GENERAL ADMINISTRATION(FFDA)DEPARTMENT, 695 001.

BY ADV. SRI.JOBY CYRIAC, CGC
GOVERNMENT PLEADER SRI.V.T.K.MOHANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C) NO.14029/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE CERTIFICATE ISSUED BY THE FREEDOM FIGHTER SMT.A.V.KUTTIMALU AMMA, ATTESTED BY DR.O. UNNIKRISHNAN, VICTORIA COLLEGE, PALAKKAD

EXT.P2:- COPY OF THE CERTIFICATE ISSUED BY THE FREEDOM FIGHTER SRI.M.K.KELU, ATESTED BY GOPI N., GOVT. VICTORIA COLLEGE, PALAKKAD DT. 30.4.86.

EXT.P3:- COPY OF THE CERTIFICATE ISSUED BY THE FREEDOM FIGHTER SRI.P.R.KURUP AND 22.4.85.

EXT.P4:- COPY OF THE CERTIFICATE DT. 20.12.81 & 13/6.83 ISSUED BY THE FREEDOM FIGHTER SRI.K.P.KELU NAIR, ATTESTED BY GOPI.N, GOVERNMENT VICTORIA COLLEGE, PALAKKAD.

EXT.P5:- COPY OF THE CERTIFICATE DT. 28.12.1981 ISSUED BY THE FREEDOM FIGHTER SRI.K.G.KARUNAKARA MENON, ATTESTED BY GOPI.N, GOVERNMENT VICTORIA COLLEGE, PALAKKAD.

EXT.P6:- COPY OF THE CERTIFICATE DT. 15.6.83 ISSUED BY THE ATTAYIL VALAPPIL UNNIKRISHNA MENON @ A.U. MENON.

EXT.P7:- COPY OF THE DOCTOR'S CERTIFICATE DT. 27.12.81 SHOWING THAT LATE SRI.V.KESAVAN NAIR WAS BLIND .

EXT.P8:- COPY OF THE PROCEEDINGS IN P.P.O. NO.KFF-12009 DT. 20.12.90 ISSUED BY THE PALAKKAD DISTRICT COLLECTOR.

EXT.P9:- COPY OF THE DEATH CERTIFICATE DT. 18.8.97 OF SHRI.V.KESAVAN NAIR.

EXT.P10:- COPY OF THE LEGAL HEIRSHIP CERTIFICATE NO.K.DIS/16410/97/04, DT. 9.3.1998 ISSUED TO THE PETITIONER

EXT.P11:- COPY OF THE ORDER ISSUED BY THE ACCOUNTANT GENERAL INCORPORATING THE NAME OF THE PETITIONER AS THE BENEFICIARY ELIGIBLE FOR FAMILY PENSION DT.13.2.92.

EXT.P12:- COPY OF THE COMMUNICATION GIVEN TO THE PETITIONER NO.42712/FFPA3/98/PAD DT. 6.6.2000.

EXT.P13:- COPY OF THE CERTIFICATE NO.331/RAK/2001/E., DT. 23.7.01 ISSUED BY THE REGIONAL ARCHIVES.

W.P.(C) NO.14029/2006

EXT.P14:- COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN WP(C) NO.26917/2005 SENT TO THE 1ST RESPONDENT WITH COVERING LETTER AND A/D.

EXT.P15:- COPY OF THE REPLY GIVEN BY THE 1ST RESPONDENT.

EXT.P16:- COPY OF THE NARC ISSUED BY THE RDO, KOZHIKODE.

EXT.P17:- COPY OF THE SSS PENSION SCHEME 1980.

EXT.P18:- COPY OF THE AN EXTRACT FROM THE WEBSITE OF PRESS INFORMATION BUREAU, GOVERNMENT OF INDIA REGARDING SMT.A.V.KUTTIMALU AMMA) THE FREEDOM FIGHTER OF KERALA.

/TRUE COPY/

P.S. TO JUDGE

tss

T.R. Ramachandran Nair, J.

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W.P.(C).NO.14029 of 2006-T

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Dated this the 8th day of August, 2007

JUDGMENT

The petitioner is the widow of a freedom fighter, late Shri V. Kesavan Nair who passed away in the year 1997. The late husband of the petitioner is a recipient of State Pension for Freedom Fighters . He had applied for grant of pension under the Swathantrata Sainik Samman Pension Scheme but that could not evoke any response and meanwhile, he died on 6.7.1997. Thereafter, on 25.4.1998 the petitioner submitted an application along with necessary documents. Exts.P1 to P6 are the Personal Knowledge Certificates issued by prominent freedom fighters. The claim of the sufferings is based on his participation in the Quit India Movement and other struggles. He was an accused in the Feroke Bridge Bomb Blast Case and to escape from arrest, he had to remain underground for nearly four years between 1942 to 1946. The application of the petitioner was earlier recommended by the State Government which is evidenced by Ext.P12 letter. Since there was undue delay in the matter, she approached this court by filing Writ Petition No.26917/2005 which was disposed of by Ext.P14 judgment. The operative portion of the judgment reads as follows:

> "In the above circumstances, I direct the 1st respondent to process the application of the petitioner in accordance with the recommendation of the State Government and pass final orders thereon, within a period of one month from the date of receipt of a copy of this judgment. If the papers are not traceable with the 1st respondent, the 1st respondent shall pass orders on the basis of the writ petition and connected papers especially, Ext.P12."

It is thereafter that they have passed Ext.P15.

2. In Ext.P15 the application of the petitioner is rejected mainly for the reason that no record to support underground suffering has been produced, there is no valid non-availability of records certificate, in the absence of valid NARC, she has failed to produce any secondary evidence (PKC also) and the recommendation of the State Government is not binding. These are the main reasons stated in Ext.P15. Apart from stating so, it is also stated that the State Government as per its letter dated 1.7.2002 has stated that:

> "An enquiry was conducted through District Collector, Palakkad. It is reported that connected records regarding the judgment in Farook Bomb Case are not available and the freedom movement leading to the Bomb case is the Quit India Movement. Further details called for in your letter cited cannot be furnished as the connected records are not available."

3. The validity of Ext.P15 is challenged in this writ petition. The petitioner has also produced Ext.P16 NARC issued by the Revenue Divisional Officer, Kozhikode stating that the records of Feroke Bomb

Blast Case are not available there. Ext.P18 is the true copy of the extract from the publication of Press Information Bureau, Government of India showing the details of suffering of Smt. A.V. Kuttimalu Amma during the freedom struggle, who is one of the certifiers of the petitioner's late husband. It shows that she had been arrested and convicted for two years in the Civil Disobedience Movement in 1931. Again, during the individual Satyagraha in 1940 she was arrested and imprisoned for an year and during Quit India Movement, she was detained for two years in the Presidency Jail for Women. She was a member of the Madras Legislative Assembly, a member of the All India Congress Committee and of its Working Committee.

4. The first respondent has filed a counter affidavit in support of Ext.P15 order. It is stated in the counter affidavit that the NARC can be treated valid only when it is furnished in the following manner:

> "All concerned authorities of the State Government who could have relevant records in respect of the claim of the applicant have been consulted and it is confirmed that the official records of the relevant time are not available."

It is also stated that the certificates of the prominent freedom fighters are not in prescribed form. It further stated that the recommendation of the

State Government is not binding on the Central Government.

5. Firstly, it is a case where the issue was considered by this court in Ext.P14 judgment and a direction was issued to process the application in accordance with the recommendation of the State Government and pass final orders thereon. It was also directed that if the papers are not traceable with the first respondent, the first respondent shall pass orders on the basis of the writ petition and connected papers, especially Ext.P12. Ext.P12 therein is the same as Ext.P12 herein. It shows that the State Government had recommended the case for pension under the SSS Pension Scheme.

6. In the light of the binding directions issued by this court, the stand taken by the Union of India in Ext.P15 is clearly erroneous. This court had directed to consider the case in accordance with the recommendation of the State Government and therefore the first respondent was not right in harping on the other issues like NARC and Personal Knowledge Certificates, etc. It is pertinent to note that no dispute has been raised against the eligibility of the certifiers and there is no case that these certificates are not valid also. In Ext.P15, what is stated about the Personal Knowledge Certificates is that "you have, in any case, failed to produce any secondary evidence (i.e. PKC) also." This is apparently wrong. In the counter affidavit, a new case is developed that the Personal Knowledge Certificates are not in proper form.

It is well settled that an order passed by a statutory authority has to be judged in the light of the reasons stated in the order and it cannot be supported by adding new reasons. This principle is well settled by various decisions of the Apex Court, especially AIR 1978 SC 851. Therefore, the attempt of the first respondent to ignore the certificates on the ground that they are not in proper form, is not correct.

7. The other reason stated in Ext.P15 is the validity of the NARC. Now in Ext.P15 last paragraph will show that the State Government as per its letter dated 1.7.2002 had clearly reported that connected records are not available. It also shows that an enquiry was conducted through District Collector, Palakkad. This certificate is clearly a non availability of records certificate which satisfies the legal requirements. The State has acted through its officers to find out the availability of records and after satisfying that the records are not available, have reported the matter to the Union of India. In regard to the acceptability of the same, learned counsel for the petitioner brought to my notice a decision of this court in **Gouri v. Union of India** (2002 (2) KLT SN page 28, case No.32) concerning a similar case. It was held as follows:

> "The case of the petitioner was disposed of by ignoring the mandate of law and scheme with a biased and closed mind. Petitioner's

> husband was already given State pension for freedom fighters. The freedom fighter is already dead and petitioner is nearing the age of 75. Certificates produced by the petitioner were issued by prominent freedom fighters, District Collector and State Government recommended the case etc. were ignored in Ext.P9 with a closed mind in an arbitrary manner. Petitioner's husband, while he was alive, made several representations and approached the High Court and obtained Ext.P8 judgment. Thereafter, he died. Now, the petitioner was compelled to approach this court. Respondent is adopting a sadist view. No valid reasons are given to reject the claim for pension as claimed and Ext.P9 is set aside. Petitioner's husband applied for Central pension in 1973 itself, pension as per the SSS Pension Scheme should be paid as prayed."

Learned counsel also relied upon the observations of this court in **Sadananda Swamy v. Union of India** (2004 (2) KLT SN page 76, case No.92) in a similar case. It was held therein that the application cannot be rejected for non furnishing of minute details or for absence of records. The learned counsel also brought to my notice a judgment of a learned Single Judge of this court in O.P.No.9558/1999. Therein also, after referring to the certificates produced, it was observed as follows:

> "As can be seen from Ext.P2, petitioner was asked to produce certificate from the Court. Petitioner has produced the same. Further, after the District Advisory Committee's decision and after production of the certificates, State Government has satisfied and State Government has forwarded the application of the petitioner. That itself shows that State Government has accepted the contentions of the petitioner. No further certificate is necessary. Since petitioner remained underground for more than six months to evade arrest for his participation in Quit India Movement, he is entitled to freedom fighters pension as per SSSP Scheme. "

His Lordship was pleased to hold that since there is a recommendation by the Government after taking into consideration the decision of the District Advisory Committee, no further certificate is necessary.

8. Herein, the report of the State Government extracted in paragraph 5 of Ext.P15 itself satisfies the non availability of records certificate. Therefore, the insistence that there should have been another non availability of records certificate in a particular manner, is not correct. There is substantial compliance in the matter The petitioner has produced in this case Ext.P16 certificate from the Revenue Divisional Officer, Kozhikode dated 12.4.2006 stating that the records of Feroke Bomb Blast Case are not available in the office. The sufficiency of the same is not disputed in the counter affidavit.

9. Then the other question is regarding the eligibility of the certifiers. The eligibility of those certifiers as prominent freedom fighters is not disputed in Ext.P15 or in the counter affidavit. To make mention of the eligibility of one of the prominent freedom fighters, it is evident from Ext.P18 that Smt. A.V. Kuttimalu Amma was a prominent freedom fighter who had been active in the freedom struggle in the Former Madras Presidency even from very early times and who had suffered imprisonment also for different periods. Therefore, the acceptability of her certificate

cannot be disputed at all.

10. Plainly, Ext.P15 order has been passed without considering the binding directions of this court in Ext.P14. Ext.P14 was never challenged by filing an appeal. Therefore, the findings rendered therein have become final. In Ext.P14 judgment, the important direction was to consider the application based on the recommendation of the State Government. Therefore, the reason stated in Ext.P15 that the recommendation of the State Government is not binding upon the Central Government, does not appear to be correct. It is clear from the certificates Exts.P1 to P6 that he was an active freedom fighter in the Quit India Movement. Hence, his eligibility cannot be disputed at all.

11. Therefore, Ext.P15 is quashed. There will be a direction to the first respondent to pass an order sanctioning grant of pension. Appropriate orders will be passed within a period of two months from the date of production of a copy of this judgment. In view of the decision of this court in **Union of India v. Radhamony** (2005 (4) KLT 27), the petitioner will be eligible to be granted pension from the date on which the original application was received. The pension along with arrears shall be disbursed

accordingly.

The writ petition is allowed as above. No costs.

(T.R. Ramachandran Nair, Judge.)

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